

IN THE HIGH COURT OF ORISSA: CUTTACK

W.P.(C) NO. 20134 OF 2011

CODE NO. 070600

IN THE MATTER OF:

An application under Article 226 & 227 of the Constitution of India,

A N D

IN THE MATTER OF :

An application under The Right to Information Act, 2005,

A N D

IN THE MATTER OF :

An application challenging the legality and propriety of the order dtd.14.03.2011 passed by State Information Commissioner passed in Second Appeal No.224 of 2008 and Second Appeal No.359 of 2008, wherein the petitioner was directed to submit the information required by the Applicant and to set up an appropriate system as per Section 5(1) and (2) under the RTI Act, 2005 and the subsequent order dtd.06.06.2011 passed in the said appeals on an application of the petitioner for recalling the order dtd.14.03.2011, wherein the Information Commissioner has erroneously dealt with the issues raised before it as per the directive of the order dtd.31.01.2011 passed by the Hon'ble Apex Court in SLP (Civil) No.758, 776 & 777 of 2010 confirming its earlier order,

A N D

IN THE MATTER OF:

NORTH EASTERN ELECTRICITY SUPPLY COMPANY ORISSA LIMITED (NESCO), represented through its Chief Executive Officer (CEO), Corporate Office, Januganj, Balasore, District: Balasore, Orissa.

- Vrs. -



Presented in Court

B.O.

26/7/11

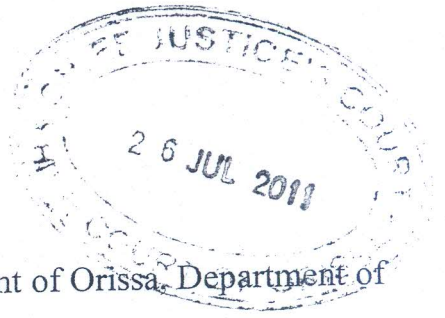
filed
Adm

9-26-7-2011
Surenendra Prasad Dhal

NOTARY

Advocate

[2]



1. The Secretary to Government of Orissa, Department of Information and Public Relations, Secretariate Building, Bhubaneswar, District: Khurda.
2. Nilambara Mishra, age not known, Son^{of} Kshetra Mohan Mishra, At/P.O. Rudhunga, Via/P.S.Simulia, District : Balasore-756126.

...
OPP.PARTIES

The matter out of which this Writ application arises was never before this



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J. H. C.-98]

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| 3. | 19-08-2011 | <p>Heard Mr. Suresh Tripathy, learned counsel for the petitioner, Mr. R.K. Mohapatra, learned Government Advocate and Mr. Biswanath Rath, learned counsel for opposite party No.2.</p> <p>2. This writ petition has been filed by the North Eastern Electricity Supply Company of Orissa Ltd. (NESCO) challenging the legality of the orders dated 14.03.2011 and 06.06.2011 (under Annexures-1 & 3) passed by the State Information Commissioner in Second Appeal Nos. 224 of 2008 and 359 of 2008, wherein the petitioner-Company was directed to submit the information as required by the applicant under the Right to Information Act, 2005 (hereinafter called 'the RTI Act') and to set up an appropriate system as per Section 5(1) and (2) of the RTI Act. Further the petitioner-company has prayed for issuance of a writ of certiorari by quashing the impugned orders under Annexures-1 & 3 urging various legal contentions.</p> <p>3. All the legal contentions need not be adverted in detailed in this judgment in view of the clear pronouncement of law by this Court rendering the decision on the very same legal contention that the petitioner-Company comes within the purview of the definition of Section 2(h) of the RTI Act. The petitioner-Company in the earlier writ petition, being W.P.(C) No. 9042 of 2006 (NESCO Vs. State of Orissa & Ors.), reported in 109(2010) CLT 473, challenged the letter of the State Government in the Energy Department dated 16.3.2006 holding that the petitioner-Company falls within the definition of "public authority" as defined in Section 2(h) of the RTI Act. This Court in the said writ petition while dealing with the rival legal contentions of the parties held that the petitioner-company is a subsidiary of GRIDCO, which is a wholly owned Government company, which holds 49% equity shares in the</p> | |

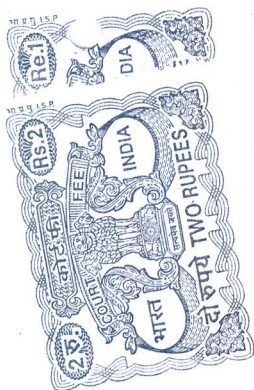


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| | | <p>4 distribution companies including the petitioner-company, who are engaged in distribution & supply of electricity in different parts of Orissa under licenses granted to them by the OERC. Further the petitioner-company as well as the other 3 distribution companies execute different schemes sponsored by the Central & the State Government, the funds of which are provided by the appropriate Government. The 4 distribution companies, including the petitioner company have been created under the Orissa Electricity Reforms (Transfer of Assets, Liabilities, Properties & Personnel of GRIDCO to Distribution Companies) Rules, 1998 (in short 'the Rules, 1998'), which was framed by the State Government for the purpose of providing & giving effect to the preparation & implementation of the scheme for transfer of distribution undertakings of the GRIDCO to the said 4 distribution companies. The said 4 distribution companies including the petitioner-company are governed by the different rules & regulations framed by the State Government. Considering the all such aspects, this Court while dismissing the said writ petition came to the conclusion that the petitioner company falls within the definition of "public authority" as defined under Section 2(h) in the RTI Act, the decision of the Government is perfectly legal and valid. Similar two other writ petitions filed by the similarly placed companies i.e. Southern Electricity Supply Company of Orissa Ltd. (SOUTHCO) and Western Electricity Supply Company of Orissa Ltd. (WESCO) on the very same issue and challenging the very same order of the Government were also dismissed by this Court on 9.12.2009.</p> <p>4. The said judgment of this Court was challenged before the Supreme Court by the aforesaid Companies by filing SLP (Civil) Nos. 758, 776, 777 of 2010. The said SLPs were withdrawn on the basis of the submission made by the</p> | |



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| | | <p>learned senior counsel on behalf of the petitioners therein vide order dated 31.01.2011, which reads thus :</p> <p>“Mr. Pinaki Mishra, learned senior counsel appearing for the petitioners seeks leave of the Court to withdraw these Special Leave Petitions. Permission granted. These Special Leave Petitiones are, accordingly dismissed as withdrawn with liberty to the petitioners to raise all the questions as and when the occasion arise.”</p> <p>5. The legal question which required consideration by us in this writ petition is also very much similar to the legal question which has already been answered by the Division Bench of this Court in the aforesaid writ petitions and against the said Division Bench judgment of this Court, SLPs were filed before the Supreme Court and subsequently withdrawn. Hence, the judgment rendered by this Court on this issue is final. Therefore, the question does arise as to whether the petitioner can re-agitate the self same legal question before this Court again. For our repeated question in this regard to the learned counsel for the petitioner, he is unable to convince us with reference to the statutory provisions and law on this question. That being the position, in our view, petitioner-company cannot re-agitate the issue in a collateral proceeding questioning the correctness of the impugned order passed by the State Information Commissioner, which is in accordance with the provisions of the RTI Act. Therefore, in our view, as the findings recorded by the Division Bench of this Court is against the petitioner-company and legal question involved in this writ petition has already been considered and answered, the petitioner again cannot raise the same contention and this Court also cannot take a different view on the same point. Therefore, we cannot entertain this writ petition.</p> <p>6. Further, a question came up for consideration before this Court in W.P.(C) No. 17178 of 2011 filed by the</p> | |



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| | | <p>petitioner-Company in relation to the Prevention of Corruption Act, 1988 (in short the 'PC Act') wherein the petitioner-Company challenged the order dated 26th May, 2011 passed by the Government of Orissa in the Energy Department holding that the employees of the petitioner-Company are 'public servants' and they are coming under the purview of the provisions of the PC Act. While answering the point as to whether the employees of the petitioner-Company are 'public servants' as held by the Government and as to whether they can come under the purview of the P.C. Act or not, this Court while dismissing the said writ petition vide judgment dated 13.7.2011, after careful consideration of the different provisions of the OERC Act, P.C. Act, Indian Electricity Act, and referring to the various Constitution Bench decisions of the Supreme Court in the cases of Pradeep Kumar Biswas Vs. Indian Institute of Chemical Biology and Ors., reported in (2002) 5 SCC 111; Ujjam Bai Vs. State of Uttar Pradesh, reported in AIR 1962 SC 1621; Ajay Hasia Vs. Khalid Mujib Sehravardi, reported in (1981) 1 SCC 722; and Sukhdev Singh & Ors. Vs. Bhagatram Sardar Singh Raghuvanshi, reported in (1975) 1 SCC 421 ; and also decisions of the Supreme Court of the United States in the case of Terry Vs. Adams, 273 US 536; and Nixon Vs. Condon, 266 US 73; came to the conclusion that the petitioner-Company though a private company is discharging public functions/duties, therefore, its employees also discharge the public duty and therefore they all come under the definition of 'public servants' within the meaning of Section 2(c) of the PC Act and as the employees of the petitioner-company are performing the public duties, they are public servants.</p> <p>8. The instant case is also aptly applicable to the fact situation of the aforesaid writ petition No. 17178 of 2011. As it has already been held by this Court that the petitioner-</p> | |



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| | | <p>Company is discharging the public duties and its employees are public servants under the definition of Section 2(c) of the PC Act, the petitioner-Company cannot take a stand that it is not falling within the definition of "public authority" as defined under Section 2(h) in the RTI Act</p> <p>9. For the reasons stated supra, this writ petition fails and is accordingly dismissed.</p> <p>10. After dictating the order, learned counsel for the petitioner, without prejudice to the rights of the petitioner to challenge this order, prayed for grant of two months time to the petitioner-Company for appointment of PIOs, APIOs and First Appellate Authorities as per the provisions of the RTI Act. The request made by the learned counsel for the petitioner-Company is genuine, therefore, we feel it just and proper to grant six weeks time to the petitioner-Company for the said purpose.</p> <p style="text-align: right;">Sd. V. Gopala Gowda CJ. Sd. B.N. Mahapatra J.</p> <p style="text-align: center;">Compd by Agh 24.8.11</p> | |

